

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERIT CAPITAL GROUP, LLC,

USDC SDNY
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ORIGINAL

Plaintiff,

-against-

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Case No. 04-cv-07690-CM-RLE

TRIO INDUSTRIES MANAGEMENT, LLC,
TRIO INDUSTRIES HOLDINGS, LLC,
EVAN R. DANIELS, and ROBERT E. GYEMANT,

JUDGE CASEY

Defendants.

X

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Merit Capital Group, LLC ("Merit Capital"), by its attorneys, Gersten, Savage, Kaplowitz, Wolf & Marcus, LLP, respectfully submits this memorandum of law in support of Merit Capital's motion for a temporary restraining order and preliminary injunction against defendants Trio Industries Management, LLC, Trio Industries Holdings, LLC ("Trio Industries Holdings"), Evan R. Daniels, and Robert E. Gyemant.

The facts supporting this application are set forth in the accompanying affidavit of Harvey Bloch, sworn to on September 26, 2004. For the reasons set forth therein, (i) Merit Capital has a clear likelihood of success on the merits, since its rights to foreclose upon the specified membership interests in Trio Industries Holdings are plainly set out in the relevant loan agreements, and since defendants cannot dispute that they have failed to pay Merit Capital more than \$739,054.14 and that they are in default under the loan agreement, promissory note, pledge

agreement and other agreements that triggered Merit Capital's rights; (ii) Merit Capital will suffer irreparable injury if the requested temporary restraining order and preliminary injunction are not granted, since plaintiff has the undeniable legal entitlement to control Trio Industries Holdings, but defendants are running the company's affairs as though they still control it; and (iii) the balance of the equities is heavily – indeed overwhelmingly – in favor of Merit Capital, which loaned substantial money to defendants and received certain valuable rights in exchange, and which is now being deprived of those clear rights by defendants who are in undisputed default of their obligations.

Accordingly, it is respectfully requested that Merit Capital's motion be granted in its entirety pursuant to Fed.R.Civ.Proc. 65, and that each of the defendants, their agents and all individuals and entities acting on their behalf be prohibited from transferring, conveying, selling, assigning, encumbering, hypothecating, dissipating and/or impairing the value of any membership interests in Trio Industries Holdings and any assets or other property belonging to or held for the benefit of Trio Industries Holdings; and from taking or carrying out any actions on behalf of Trio Industries Holdings including, but not limited to, conducting board or other corporate meetings, entering into contracts on the company's behalf, and managing the day-to-day operations of the company, all pending final adjudication of this action.

No application for this relief has been made previously.

Dated: September 27, 2004

GERSTEN, SAVAGE, KAPLOWITZ,
WOLF & MARCUS, LLP
Attorneys for Plaintiff

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